

SDMS 88203212  
AEROLITE PLATING

3441-00003

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APR 23 1993  
CLERK, U.S. DISTRICT COURT  
DISTRICT OF NEVADA  
BY B. Headley DEPUTY

10 RECEIVED

11 APR 21 1993 IN THE UNITED STATES DISTRICT COURT  
12 CLERK, U.S. DISTRICT COURT FOR THE DISTRICT OF NEVADA  
13 DISTRICT OF NEVADA  
14 BY \_\_\_\_\_ DEPUTY

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 AEROLITE CHROME CORPORATION,  
19 AEROLITE CORPORATION,  
20 AEROLITE PLATING, AEROLITE  
COMPANY, ARTHUR THOMAS,  
21 RICHARD ROMERO, MATHEW  
THOMAS, ARMEN THOMASSIAN  
and MICRON INCORPORATED,

22 Defendants.  
23

CIVIL ACTION NO.  
CV-N-91-314 (HDM)

CONSENT DECREE

U. S. ATTORNEY, Reno, Nev.

APR 21 1993

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1 over the Settling Defendants. Solely for the purposes of this  
2 Consent Decree, the Settling Defendants waive all objections and  
3 defenses that they may have to jurisdiction of the Court or to  
4 venue in this District and shall not challenge the entry of this  
5 Consent Decree or this Court's jurisdiction to enter and enforce  
6 this Consent Decree.

### 7 III. PARTIES BOUND

8 2. This Consent Decree is binding upon the United States  
9 and upon the Settling Defendants and their heirs, successors and  
10 assigns. Any change in ownership or corporate or other legal  
11 status, including but not limited to any transfer of assets or  
12 real or personal property, shall in no way alter the status or  
13 responsibilities of the Settling Defendants under this Consent  
14 Decree.

### 15 IV. DEFINITIONS

16 3. Unless otherwise expressly provided herein, terms used  
17 in this Consent Decree which are defined in CERCLA or in  
18 regulations promulgated under CERCLA shall have the meaning  
19 assigned to them in CERCLA or in such regulations. Whenever  
20 terms listed below are used in this Consent Decree, the following  
21 definitions shall apply:

22 a. "CERCLA" shall mean the Comprehensive Environmental  
23 Response, Compensation, and Liability Act of 1980, as amended, 42  
24 U.S.C. §§ 9601 et seq.

25 b. "Consent Decree" shall mean this Decree.

26 c. "Day" shall mean a calendar day. In computing any  
27 period of time under this Consent Decree, where the last day  
28

1 would fall on a Saturday, Sunday, or Federal Holiday, the period  
2 shall run until the close of business of the next working day.

3 d. "EPA" shall mean the United States Environmental  
4 Protection Agency and any successor departments or agencies of  
5 the United States.

6 e. "Interest" shall mean interest at the rate specified for  
7 interest on investments of the Hazardous Substance Superfund  
8 established under subchapter A of chapter 98 of Title 26 of the  
9 U.S. Code, in accordance with 42 U.S.C. § 9607(a), compounded (at  
10 EPA's option) on a daily, monthly or annual basis.

11 f. "National Contingency Plan" shall mean the National Oil  
12 and Hazardous Substances Pollution Contingency Plan promulgated  
13 pursuant to Section 105 of CERCLA 42 U.S.C. § 9605, codified at  
14 40 CFR Part 300, including but not limited to any amendments  
15 thereto.

16 g. "Paragraph" shall mean a portion of this Consent Decree  
17 identified by an arabic numeral or an upper case letter.

18 h. "Parties" shall mean the United States and each and  
19 every Settling Defendant.

20 i. "Past Response Costs" shall mean all costs, including  
21 but not limited to direct and indirect costs, that EPA and the  
22 U.S. Department of Justice on behalf of EPA have incurred in  
23 connection with this Site up to and including the date of the  
24 entry of this decree, plus accrued interest on all such costs  
25 through such date.

26 j. "Section" shall mean a portion of this Consent Decree  
27 identified by a roman numeral.

1 k. "Settling Defendants" shall mean Aerolite Chrome  
2 Corporation, Aerolite Corporation, Aerolite Plating, Aerolite  
3 Company, Arthur Thomas, Richard Romero, Mathew Thomas, and Micron  
4 Incorporated.

5 l. "Site" shall mean the Aerolite Plating site, located in  
6 Reno, Washoe County, Nevada.

7 m. "United States" shall mean the U.S. Environmental  
8 Protection Agency (EPA) and the U.S. Department of Justice acting  
9 on behalf of the EPA.

10 V. REIMBURSEMENT OF RESPONSE COSTS

11 4. Within 30 days of entry of this Consent Decree, the  
12 Settling Defendants shall pay to the United States \$375,000 for  
13 Past Response Costs. All payments under this Decree shall be  
14 made by Electronic Funds Transfer ("EFT" or wire transfer) to the  
15 U.S. Department of Justice lockbox bank in accordance with  
16 instructions provided by the Plaintiff to the Settling Defendants  
17 upon execution of the Consent Decree. Any EFTs received at the  
18 U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be  
19 credited on the next business day.

20 VI. FAILURE TO MAKE TIMELY PAYMENTS

21 5. Interest on Late Payments. In the event that any  
22 payment required by Section V is not made when due, Interest, as  
23 provided for in Paragraph 3, shall accrue on the unpaid balance  
24 from the date payment was due, through the date of payment.

25 6. Stipulated Penalty. If any amounts due to the United  
26 States under this Consent Decree are not paid by the required  
27 date, the Settling Defendants shall pay as a stipulated penalty,  
28

1 in addition to the Interest required by Paragraph 5, \$500 per day  
2 that such payment is late. Stipulated penalties are due and  
3 payable without demand on the actual date of payment.

4 7. If the United States takes legal action to collect any  
5 payment required by this Consent Decree, the Settling Defendants  
6 shall reimburse the United States for all costs of such action,  
7 including but not limited to costs of attorney time.

8 8. Payments made under Paragraphs 5-7 shall be in addition  
9 to any other remedies or sanctions available to Plaintiff by  
10 virtue of Settling Defendants' failure to make timely payments  
11 required by this Decree.

12 9. The obligations of the Settling Defendants to pay  
13 amounts owed the United States under this Consent Decree are  
14 joint and several. In the event of the failure of any one or  
15 more Settling Defendants to make the payments required under this  
16 Consent Decree, the remaining defendants shall be responsible for  
17 such payments.

18 VII. COVENANT NOT TO SUE BY PLAINTIFF

19 10. Covenant Not to Sue. Except as specifically provided  
20 in Paragraph 11, the United States covenants not to sue Settling  
21 Defendants under Section 107 of CERCLA to recover Past Response  
22 Costs as defined under this Consent Decree. This covenant not to  
23 sue extends only to the Settling Defendants and does not extend  
24 to any other person. This covenant not to sue shall take effect  
25 upon receipt by the United States of all payments required by  
26 Sections V and VI of this Consent Decree.

1           11. Reservation of Rights.

2           a. General. The covenant not to sue set forth in the  
3 preceding paragraph does not pertain to any matters other than  
4 those expressly specified therein. The United States reserves,  
5 and this Consent Decree is without prejudice to, all rights  
6 against Settling Defendants with respect to all other matters.  
7 Except as provided in the preceding paragraph, nothing contained  
8 herein shall in any way limit or restrict the response and  
9 enforcement authority of the United States to initiate  
10 appropriate action, either judicial or administrative, under  
11 Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606,  
12 and 9607, or any other provision of law, against Settling  
13 Defendants or against any other person or entity not a party to  
14 this Decree.

15           b. Specific reservations. The covenant not to sue set  
16 forth in Paragraph 10 above does not apply, inter alia, to the  
17 following:

18           (1) claims based upon failure of Settling Defendants  
19 to meet the requirements of this Consent Decree;

20           (2) claims for damages to natural resources, as  
21 defined in Section 101(6) of CERCLA, 42 U.S.C.

22           § 9601(6);

23           (3) claims for costs incurred by any natural resources  
24 trustees;

25           (4) claims based upon criminal liability;



1 (5) claims for response costs incurred by any federal  
2 agencies other than those specified within the  
3 definition of "United States" in this Consent Decree;  
4 (6) claims for injunctive relief or administrative  
5 order enforcement under Section 106 of CERCLA;  
6 (7) claims for costs incurred or to be incurred by the  
7 United States in connection with the Site that are not  
8 within the definition of Past Response Costs set forth  
9 in Paragraph 3.

10 VIII. COVENANTS BY SETTLING DEFENDANTS

11 12. Settling Defendants hereby covenant not to sue and  
12 agree not to assert any claims or causes of action against the  
13 United States with respect to the Past Response Costs or this  
14 Consent Decree, including, but not limited to, any direct or  
15 indirect claim for reimbursement from the Hazardous Substance  
16 Superfund (established pursuant to the Internal Revenue Code, 26  
17 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, or  
18 113, or any other provision of law, any claim against the United  
19 States, including any department, agency, or instrumentality of  
20 the United States pursuant to CERCLA Sections 107 and 113 related  
21 to the Past Response Costs, or any claims arising out of response  
22 activities at the Site. Nothing in this Consent Decree shall be  
23 deemed to constitute preauthorization of a claim within the  
24 meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.  
25 § 300.700(d).

IX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

13. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

14. Settling Defendants are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for Past Response Costs. Such protection is conditioned upon receipt by EPA of all the payments required by this Consent Decree.

15. Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial for matters related to this Consent Decree.

1           16. In any subsequent administrative or judicial proceeding  
2 initiated by the United States for injunctive relief, recovery of  
3 response costs, or other appropriate relief relating to the Site,  
4 Settling Defendants shall not assert, and may not maintain, any  
5 defense or claim based upon the principles of waiver, res  
6 judicata, collateral estoppel, issue preclusion, claim-splitting,  
7 or other defenses based upon any contention that the claims  
8 raised by the United States in the subsequent proceeding were or  
9 should have been brought in the instant case; provided, however,  
10 that nothing in this Paragraph affects the enforceability of the  
11 covenants not to sue set forth in Section VII (Covenant Not to  
12 Sue by Plaintiff).

13                           X. ACCESS TO INFORMATION

14           17. Settling Defendants shall provide to EPA, upon request,  
15 copies of all documents and information within their possession  
16 or control or that of their contractors or agents relating to  
17 activities at the Site, including, but not limited to, sampling,  
18 analysis, chain of custody records, manifests, trucking logs,  
19 receipts, reports, sample traffic routing, correspondence, or  
20 other documents or information related to the Site.

21                           XI. RETENTION OF RECORDS

22           20. Until 10 years after the entry of this Consent Decree,  
23 each Settling Defendant shall preserve and retain all records and  
24 documents now in its possession or control or which come into its  
25 possession or control that relate in any manner to response  
26 actions taken at the Site or the liability of any person for  
27  
28

1 response actions conducted and to be conducted at the Site,  
2 regardless of any corporate retention policy to the contrary.

3 21. At the conclusion of this document retention period,  
4 Settling Defendants shall notify the United States at least 90  
5 days prior to the destruction of any such records or documents,  
6 and, upon request by the United States, Settling Defendants shall  
7 deliver any such records or documents to EPA. Settling  
8 Defendants may assert that certain documents, records, and other  
9 information are privileged under the attorney-client privilege or  
10 any other privilege recognized by federal law. If Settling  
11 Defendants assert such a privilege, they shall provide the  
12 plaintiffs with the following: (1) the title of the document,  
13 record, or information; (2) the date of the document, record, or  
14 information; (3) the name and title of the author of the  
15 document, record, or information; (4) the name and title of each  
16 addressee and recipient; (5) a description of the subject of the  
17 document, record, or information; and (6) the privilege asserted.  
18 However, no documents reports, or other information created or  
19 generated pursuant to the requirements of this or any other  
20 Consent Decree with the United States shall be withheld on the  
21 grounds that they are privileged. If a claim of privilege  
22 applies only to a portion of a document, the document shall be  
23 provided to Plaintiff in redacted form to mask the privileged  
24 information only.

25 22. Each Settling Defendant hereby certifies, individually,  
26 that it has not altered, mutilated, discarded, destroyed or  
27 otherwise disposed of any records, documents, or other  
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1 information relating to its potential liability regarding the  
2 Site since notification of potential liability by the United  
3 States and that it has fully complied with any and all EPA  
4 requests for information pursuant to Sections 104(e) and 122(e)  
5 of CERCLA and Section 3007 of RCRA.

6 **XII. NOTICES AND SUBMISSIONS**

7 23. Whenever, under the terms of this Consent Decree,  
8 notice is required to be given or a document is required to be  
9 sent by one party to another, it shall be directed to the  
10 individuals at the addresses specified below, unless those  
11 individuals or their successors give notice of a change to the  
12 other Parties in writing. Written notice as specified herein  
13 shall constitute complete satisfaction of any written notice  
14 requirement of the Consent Decree with respect to the United  
15 States, EPA, and the Settling Defendants, respectively.

16  
17 **As to the United States:**

18 Chief, Environmental Enforcement Section  
19 Environment and Natural Resources Division  
20 U.S. Department of Justice  
21 P.O. Box 7611  
22 Ben Franklin Station  
23 Washington, D.C. 20044  
24 [Re: 90-11-3-685]

25 **As to EPA:**

26 Carita Hall-Reynolds (H-8-3)  
27 Waste Management Division  
28 United States Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

1 As to Settling Defendants:

2 N. Patrick Flanagan III, Esq.  
3 Beckley, Singleton, DeLanoy,  
4 Jemison & List, Chtd.  
50 W. Liberty, Second Floor  
Reno, Nevada 89501

5 XIII. APPROVAL OF DECREE; RETENTION OF JURISDICTION

6 24. If for any reason this Court should decline to approve  
7 this Consent Decree in the form presented, this agreement is  
8 voidable at the sole discretion of any party and the terms of the  
9 agreement may not be used as evidence in any litigation between  
10 the Parties.

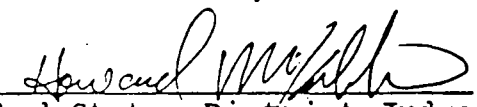
11 25. This Court shall retain jurisdiction of this matter for  
12 the purpose of enforcing the terms of this Consent Decree.

13 XIV. SIGNATORIES/SERVICE

14 26. Each undersigned representative of a Settling Defendant  
15 to this Consent Decree certifies that he or she is fully  
16 authorized to enter into the terms and conditions of this Consent  
17 Decree and to execute and legally bind such party to this  
18 document.

19 27. Each Settling Defendant has provided, on an attached  
20 signature page, the name and address of an agent who is  
21 authorized to accept service of process by mail on behalf of that  
22 party with respect to all matters arising under or relating to  
23 this Consent Decree.

24 SO ORDERED THIS 22<sup>nd</sup> DAY OF April, 19  .

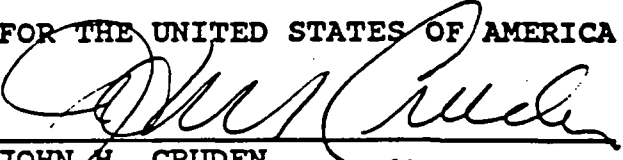
25  
26   
27 United States District Judge  
28


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of UNITED STATES OF AMERICA v. AEROLITE CHROME CORPORATION, AEROLITE CORPORATION, AEROLITE PLATING, AEROLITE COMPANY, ARTHUR THOMAS, RICHARD ROMERO, MATHEW THOMAS, ARMEN THOMASSIAN and MICRON INCORPORATED, Civil Action No. CV-N-91-314, relating to the Aerolite Plating Superfund Site.

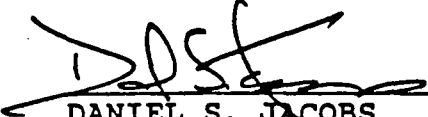
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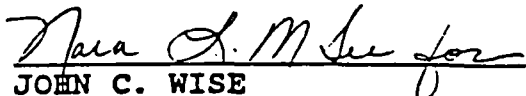
4-16-93

FOR THE UNITED STATES OF AMERICA

  
\_\_\_\_\_  
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Chief, Environmental Enforcement  
Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

  
\_\_\_\_\_  
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United States Attorney  
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Reno, Nevada 89501

  
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DANIEL S. JACOBS  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044

  
\_\_\_\_\_  
JOHN C. WISE  
Acting Regional Administrator  
Region IX  
U.S. Environmental Protection  
Agency  
75 Hawthorne Street  
San Francisco, CA 94105

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of UNITED STATES OF AMERICA v. AEROLITE CHROME CORPORATION, AEROLITE CORPORATION, AEROLITE PLATING, AEROLITE COMPANY, ARTHUR THOMAS, RICHARD ROMERO, MATHEW THOMAS, and MICRON INCORPORATED, Civil Action No. CV-N-91-314, relating to the Aerolite Plating Superfund Site.

FOR DEFENDANTS AEROLITE CHROME CORPORATION, AEROLITE CORPORATION, AEROLITE PLATING, AEROLITE COMPANY and ARTHUR THOMAS

Date: JAN-28-93

Arthur Thomas  
[Name/Address]

Agent Authorized to accept Service on Behalf of Above-signed Parties:

Name: N. PATRICK FLANAGAN, III, ESQ.  
Title: 100 W. Liberty St., Ste. 700, Reno, NV 89501  
Address: \_\_\_\_\_

FOR DEFENDANTS RICHARD ROMERO and MICRON INCORPORATED

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name/Address]

Agent Authorized to accept Service on Behalf of Above-signed Parties:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_



FOR DEFENDANT MATHEW THOMAS

Date: 1/28/93

Mathew Thomas  
[Name/Address]

Agent Authorized to accept Service on Behalf of Above-  
signed Parties:

Name: N. PATRICK FLANAGAN, III, ESQ.  
Title: Attorney  
Address: 100 W. Liberty St., Ste. 700, Reno, NV 89501

FOR DEFENDANT MATHEW THOMAS

Date: Feb

\_\_\_\_\_  
[Name/Address]

Agent Authorized to Accept Service on Behalf of Above-signed  
Party:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

FOR DEFENDANT ARMEN THOMASSIAN

Date: FEB. 18, 1993

  
\_\_\_\_\_  
[Name/Address]

832 Willow St.  
Reno 89102

Agent Authorized to Accept Service on Behalf of Above-signed  
Party:

Name: VERNON E. LEUEATY  
Title: ATTORNEY  
Address: 832 WILLOW ST.  
RENO, NV. 89502

FOR DEFENDANTS RICHARD ROMERO and MICRON INCORPORATED

Date: January 29, 1993

Richard V. Romero  
250 'c' Cal Lane  
Sparks NV 89431  
[Name/Address]

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Name: Paul F. Hamilton, Esq.

Title: Attorney-at-Law

Address: 577 California Ave., Reno, NV 89509